Jett Thomason, of Tennessee
Michelle B. Thornburgh, of Virginia
Kharmika K. Tillery, of North Carolina
Thao Ahn Nguyen Tran, of the District of Columbia
Holly D. Turner, of the District of Columbia
Melissa P. Tyborowski, of Connecticut
Stephen E. Watson, of Virginia
David Karl Wessel, of North Carolina
James L. West, of Virginia
Brad Michael Wilkinson, of Virginia
Lisa Marie Wilkinson, of Virginia
Anton Lee Wishik II, of Washington
Angela Jean Wyse, of Michigan
Duden Yegenoglu, of Georgia
Matthew June Yi, of California
Steven D. Zack, of Virginia
David J. Zanni, of Virginia

Robert Stephen Beecroft, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Iraq.

NOMINATION OF GONZALO P. CURIEL TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF CALIFORNIA

NOMINATION OF ROBERT J. SHELBY TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF UTAH

Mr. REID. I now ask unanimous consent that the Senate consider the following nominations en bloc: Calendar Nos. 674, 675; that the Senate proceed to vote on the nominations in the order listed, without intervening action or debate; the motions to reconsider be considered made and laid upon the table with no intervening action or debate; that no further motions be in order to the nominations; that any statements related to the nominations be printed in the RECORD; that the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. The clerk will report the nominations.

The legislative clerk read the nominations of Gonzalo P. Curiel, of California, to be United States District Judge for the Southern District of California, and Robert J. Shelby, of Utah, to be United States District Judge for the District of Utah.

The PRESIDING OFFICER. Is there any further debate?

The question is, Will the Senate advise and consent to the nominations of Gonzalo P. Curiel, of California, to be United States District Judge for the Southern District of California; and Robert J. Shelby, of Utah, to be United States District Judge for the District of Utah?

The nominations were confirmed.

Mr. LEAHY. Mr. President, Senate Republicans' partisan obstructionism has reached a new low. There are 17 district court nominees pending before the Senate, and 12 of them would fill judicial emergency vacancies on our Federal trial courts. In an unprecedented breaking from our tradition, Senate Republicans have decided that they will recess for the election and deny almost all of these consensus nominees confirmation. Worse, they have decided to extend the delays that Americans face in our overburdened Federal courts by denying new judges to those courts. We all know that justice delayed is justice denied. By denying confirmation votes to 15 of these 17 nominations, Senate Republicans are denying justice to the American people. By refusing to vote on these 15 nominations, Senate Republicans have declared that they are unconcerned about the millions of Americans who will continue to lack adequate access to our Federal courts and speedy justice.

Sadly this is just one more example of Senate Republicans putting partisanship ahead of the interests of the American people. The refusal to allow votes on consensus nominees has become standard operating procedure for Senate Republicans. They refused to vote on 10 judicial nominees at the end of 2009, left 19 judicial nominees pending at the end of 2010, and blocked votes on 19 judicial nominees pending at the end of 2011. It took through May of this year to clean up the backlog left from last year. Then in June Senate Republicans declared their shutdown of confirmations. I have served in the Senate for 37 years, and I have never seen so many judicial nominees, reported with bipartisan support, be denied a simple up-or-down vote for four months, five months, six months, even 11 months. I have never seen such twisted applications of their ''Thurmond Rule'' and never have I seen the Thurmond Rule used to block votes on consensus district court nominees. And if there was any doubt that Senate Republicans insist on being the party of ''no'', their current decision to deny votes on these highly-qualified, noncontroversial district court nominees, supported by their home State Senators both Republican and Democratic, while our Federal courts still have almost 80 vacancies, shows that they care more about opposing this President's nominees than helping the American people.

Before the American people elected Barack Obama as our President, district court nominees were generally confirmed within a couple of weeks of being reported by the Judiciary Committee. This was true of those nominated by Republican Presidents and Democratic Presidents. Deference was traditionally afforded to home State Senators and district court nominees supported by home State Senators were almost always confirmed unanimously.

However, Senate Republicans have raised the level of partisanship so that district court nominees have now become wrapped around the axle of partisanship. And that is unfortunate. In just this year, the Majority Leader has been forced to file cloture on 23 of President Obama's judicial nominees, including 19 district court nominees. Every single one of those 23 nominees had bipartisan support, and when the Senate was finally allowed to vote on them, all of the 22 who did receive an up-or-down vote were confirmed with votes from both Republican and Democratic Senators.

In spite of this unprecedented obstruction of President Obama's nominees, Senate Republicans are oblivious to their foot-dragging and the harm it is creating for Americans seeking justice from our Federal courts across the country.

There are currently 78 Federal judicial vacancies. Judicial vacancies during the last few years have been at historically high levels and have remained near or above 80 for nearly the entire first term of the President. Nearly one out of every 11 Federal judgeships is currently vacant. Vacancies on the Federal courts are more than two and one half times as many as they were on this date during the first term of President Bush. That is not what any objective observer would call ''consistent progress.''

The fact is that due to across-the-board obstruction by Senate Republicans, we remain well behind the pace we set during President Bush's first term. According to the Congressional Research Service, 95 percent of President Bush's district court nominees were confirmed in his first term. We would have had to confirm all 17 of the district court nominees the Majority Leader sought consent earlier this week, just to get close to parity with that level. Moreover, President Obama's district court nominees have been consistently stalled, being forced to wait nearly three times longer for a Senate vote once reported by the Judiciary Committee.

Nor has the Senate even been allowed to keep pace with the progress that Senate Democrats made on President Bush's district court nominees in 2008, the last year of his presidency. That year, the Committee reported 24 district court nominees and all 24 were confirmed. We continued holding hearings and the Committee reported and the Senate then confirmed nominees into September of that presidential election year. This year, the Senate has been allowed to confirm only 13 district court nominees reported this year. Because of Republican obstruction, the Senate has barely accomplished half of what we did in 2008.

Indeed, in September 2008, the Judiciary Committee held hearings on and then reported 10 district court nominees, all of whom were then confirmed by unanimous consent in that same month. Contrary to the assertion from the Republican leader, they were not backed up and long delayed. We did not do what Senate Republicans are now doing. We moved promptly on consensus trial court nominees. This year,

Republicans have backlogged consensus nominees who were reported in April, five months ago. None of these nominees has been pending for less than seven weeks. To date, the Senate has been allowed to confirm one district court nominee this September while 17 other Federal trial court nominees await Republicans agreeing to a vote so that they can be confirmed and get to work for the American people.

There are still far too many judicial vacancies and the Republican leader's efforts to slice and dice various numbers in ways most flattering to this obstruction do nothing to explain why we cannot make more progress. The Majority Leader is not ''jamming'' through nominees when he asks for votes that should have taken place before the Memorial Day, Fourth of July, and August recesses.

Despite the Republican filibuster against Caitlin Halligan to serve on the D.C. Circuit, Patty Shwartz of New Jersey to serve on the Third Circuit; their filibuster of Judge Barbara Keenan of Virginia to serve on the Fourth Circuit; their opposition to Justice Sonia Sotomayor, Justice Elena Kagan, Judge Jane Stranch of Tennessee to serve on the Sixth Circuit, Judge Susan Carney of Connecticut to serve on the Second Circuit, Judge Bernice Donald of Tennessee to serve on the Sixth Circuit, Judge Morgan Christen of Alaska to serve on the Ninth Circuit, Judge Stephanie Thacker of West Virginia to serve on the Fourth Circuit, Judge Jacqueline Nguyen of California to serve on the Ninth Circuit, Judge Nancy Freudenthal of the District of Wyoming, Judge Benita Pearson of the Northern District of Ohio, Judge Susan Hickey of the Western District of Arkansas, Judge Ali Nathan of the Southern District of New York, Judge Cathy Bissoon of the Western District of Pennsylvania, Judge Yvonne Rogers of the Northern District of California, Judge Sharon Gleason of the District of Alaska, Judge Cathy Bencivengo of the Southern District of California, Judge Margo Brodie of the Eastern District of New York, Judge Beth Phillips of the Western District of Missouri, Judge Gina Groh of the Northern District of West Virginia, Judge Ronnie Abrams of the Southern District of New York, Judge Susie Morgan of the Eastern District of Louisiana, Judge Miranda Du of the District of Nevada and Judge Mary Lewis of the District of South Carolina, there is one area in which we have been able to make progress is spite of Senate Republican obstruction. With the confirmation last week of Judge Stephanie Rose to the district court in Iowa, President Obama has already, in his fourth year in office, appointed as many women to the Federal bench as President Bush had in all eight years in which he was President. I hope that all Americans are proud of President Obama's outstanding effort to increase diversity in the Federal judiciary and to ensure that it better reflects all Americans. Those commendable efforts are not preventing votes on the 17 Federal trial court nominees ready for final Senate action. Senate Republicans are preventing those votes.

I wish Senate Republicans approached this as something other than an ill-conceived game of tit for tat. This obstruction has real costs to the American people. Last week I inserted in the RECORD an article about the ''Human Costs of Judicial Confirmation Delays.'' The author, Andrew Cohen, described the problems facing just one of our Nation's 94 district courts. In the Middle District of Pennsylvania, where there are two judicial emergency vacancies, a litigant had to wait nearly two months for an ''urgent injunction hearing'' because there ''simply aren't enough federal judges in the Middle District of Pennsylvania to handle his case.'' In that District, senior judges have had to take on far more cases than they would otherwise. Four of those senior judges are at least 86 years old. The Chief Judge of that district called it an ''absurdity.'' It is not fair to the senior judges, and it is not fair to the litigants who rely on the court to do justice. Two of the Federal trial court nominees being held hostage by Senate Republicans would fill judicial emergency vacancies in the Middle District of Pennsylvania.

This is just one example of the damage done to our courts by needlessly delayed confirmations. I have heard from judges around the country whose courts have vacancies, including in Illinois and Florida. They are working hard to keep their courts functioning, but they need help to ensure that all Americans have access to courts and to justice. There are also judicial emergency vacancies in California, New York and Illinois that we could have filled this week but Senate Republicans objected. Of the 17 district court nominees pending before the Senate a dozen would fill judicial emergency vacancies.

These longstanding vacancies are harming the American people, but it does not have to be this way. Americans seeking justice in Federal trial courts in California, Connecticut, and Utah should not have to wait five months for a judge because Senate Republicans will not proceed with nominations that have bipartisan support and have been considered and voted on by the Senate Judiciary Committee. Americans in Florida, Illinois, Maryland, Michigan, New York, Pennsylvania, and Oklahoma should not have to wait four and five extra months for their courtrooms to have judges. If we were keeping pace with what Senate Democrats did in President Bush's first term and as recently as 2008, those nominees would be confirmed. They would be hearing cases and providing justice today.

Some Senate Republicans have sought to justify their inaction on nominations by complaining that the President has not sent us enough nominees. The fact is that there are 17 district court nominees who can be confirmed right now, including 12 who would fill emergency vacancies. The names of these 17 nominees have been printed in the Senate Executive Calendar every day for the last several months, every day since they were voted on by the Senate Judiciary Committee months ago. There is no excuse for not acting on them.

Today the Senate finally voted on the nomination of Gonzalo Curiel to fill a judicial emergency vacancy on the U.S. District Court for the Southern District of California. He has the support of his home State Senators, Senator FEINSTEIN and Senator BOXER. His nomination was reported with a virtually unanimous voice vote by the Judiciary Committee five months ago. The only objection came as a protest on another issue by Senator LEE.

Judge Curiel currently serves as a judge on the Superior Court of California in San Diego County. Prior to joining the State bench in 2006, Judge Curiel spent 17 years as a Federal prosecutor and 10 years in private practice. As a Federal prosecutor he rose to become Chief of the Narcotics Enforcement Section for the Southern District of California, and led the successful investigation and prosecution of a multibillion dollar trafficking organization responsible for over 100 drug-related murders in the United States and Mexico.

The Senate finally voted on the nomination of Robert Shelby to fill a judicial emergency vacancy on the U.S. District Court for the District of Utah. He is currently a shareholder at the Salt Lake City law firm of Snow, Christensen & Martineau. After law school he served as a law clerk to Judge J. Thomas Greene in the District of Utah, the same court to which he is nominated. His nomination, which has the support of both of Utah's Senators, Senator HATCH and Senator LEE, was reported nearly unanimously by the Judiciary Committee by voice vote nearly five months ago.

Further delays on the 15 additional district court nominees still awaiting their confirmation votes do not help the American people. These nominees should be providing justice for the American people. Supreme Court Justice Anthony Kennedy said recently that this extreme partisanship erodes the public's confidence in our courts and ''makes the judiciary look politicized when it is not, and it has to stop.'' He is right. If Senate Republicans have a good reason for why courts in California and Illinois and Michigan and New York and Pennsylvania should remain overburdened and unable to provide the quality and speedy justice Americans deserve, then I wish they would let the American people know what that reason is. The fact is, Senate Republicans have not explained their unprecedented obstruction of President Obama's consensus

nominees, they just try to pretend it does not exist. The American people know better, and they deserve better.

Americans are rightfully proud of our legal system and its promise of access to justice and speedy trials. This promise is embedded in our Constitution. When overburdened courts made it hard to keep this centuries-old promise, the Senate should work in a bipartisan manner to fill judgeships and to create and fill new judgeships. That is what Senate Democrats did when Ronald Reagan, George H.W. Bush, and George W. Bush were President. Since the American people elected President Obama, Senate Republicans have determined that they are no longer interested in whether or not our courts are able to meet this fundamental guarantee. They have decided that it is acceptable for hardworking Americans to wait two months for ''urgent'' hearings, and that the ten additional judicial emergency vacancies they could fill right now should remain vacant for no good reason. The American people deserve better.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EUROPEAN UNION EMISSIONS TRADING SCHEME PROHIBITION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 484, S. 1956.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1956) to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''European Union Emissions Trading Scheme Prohibition Act of 2011''.

SEC. 2. PROHIBITION ON PARTICIPATION IN THE EUROPEAN UNION'S EMISSIONS TRADING SCHEME.

(a) IN GENERAL.—The Secretary of Transportation shall prohibit an operator of a civil aircraft of the United States from participating in the emissions trading scheme unilaterally established by the European Union in EU Directive 2003/87/EC of October 13, 2003, as amended, in any case in which the Secretary determines the prohibition to be, and in a manner that is, in the public interest, taking into account—

(1) the impacts on U.S. consumers, U.S. carriers, and U.S. operators;

(2) the impacts on the economic, energy, and environmental security of the United States; and

(3) the impacts on U.S. foreign relations, including existing international commitments.

(b) PUBLIC HEARING.—After determining that a prohibition under this section may be in the public interest, the Secretary must hold a public hearing at least 30 days before imposing any prohibition.

SEC. 3. NEGOTIATIONS.

The Secretary of Transportation, the Administrator of the Federal Aviation Administration, and other appropriate officials of the United States Government—

(1) should, as appropriate, use their authority to conduct international negotiations, including using their authority to conduct international negotiations to pursue a worldwide approach to address aircraft emissions; and

(2) shall, as appropriate, take other actions under existing authorities that are in the public interest necessary to hold operators of civil aircraft of the United States harmless from the emissions trading scheme referred to under section 2.

SEC. 4. DEFINITION OF CIVIL AIRCRAFT OF THE UNITED STATES.

In this Act, the term ''civil aircraft of the United States'' has the meaning given the term under section 40102(a) of title 49, United States Code.

Mr. THUNE. Mr. President, I would like to thank my colleague from Oregon, Mr. MERKLEY, for working with the Senator from Missouri, Mrs. MCCASKILL, and me today to address his concerns with our bipartisan bill, S. 1956, the European Union Emissions Trading Scheme Prohibition Act. The amendment, which he has filed for consideration and which is currently running through the hotline process, reconfirms that the Secretary of Transportation's responsibility to determine there is a public interest before taking any action does not end after the first determination. Instead, it is an ongoing responsibility.

The amendment that Mr. MERKLEY has filed, and which I support, clarifies that it is the Secretary's right to reassess the public interest determination. Additionally, the amendment clarifies that if the EU ETS is amended, if there is an international agreement on aviation emissions, or if a Federal public law is enacted that addresses aviation emissions, that the Secretary will again revisit the public interest determination.

Again, I would like to thank the Senator from Oregon for working with me, and I look forward to passage of S. 1956.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported amendment be considered, the Cardin and Merkley amendments at the desk be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be considered made and laid upon the table, and any statements relating to this bill be printed in the RECORD.

I would also extend my appreciation to all Senators who have been involved in this contentious issue—for a while, at least—and especially Senator THUNE, who has helped us work through this and a number of other things.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendments were agreed to, as follows:

(Purpose: To prohibit the use of taxpayer dollars to pay taxes and penalties imposed on United States air carriers pursuant to the European Union emissions trading scheme)

Beginning on page 5, strike line 14 and all that follows through page 6, line 2, and insert the following:

SEC. 3. NEGOTIATIONS.

(a) IN GENERAL.—The Secretary of Transportation, the Administrator of the Federal Aviation Administration, and other appropriate officials of the United States Government—

(1) should, as appropriate, use their authority to conduct international negotiations, including using their authority to conduct international negotiations to pursue a worldwide approach to address aircraft emissions, including the environmental impact of aircraft emissions; and

(2) shall, as appropriate and except as provided in subsection (b), take other actions under existing authorities that are in the public interest necessary to hold operators of civil aircraft of the United States harmless from the emissions trading scheme referred to under section 2.

(b) EXCLUSION OF PAYMENT OF TAXES AND PENALTIES.—Actions taken under subsection (a)(2) may not include the obligation or expenditure of any amounts in the Airport and Airway Trust Fund established under section 9905 of the Internal Revenue Code of 1986, or amounts otherwise made available to the Department of Transportation or any other Federal agency pursuant to appropriations Acts, for the payment of any tax or penalty imposed on an operator of civil aircraft of the United States pursuant to the emissions trading scheme referred to under section 2.

(Purpose: To provide for the reassessment by the Secretary of Transportation of a determination that it is in the public interest to prohibit operators of civil aircraft of the United States from participating in the European Union's emissions trading scheme)

On page 5, between lines 13 and 14, insert the following:

(c) REASSESSMENT OF DETERMINATION OF PUBLIC INTEREST.—The Secretary—

(1) may reassess a determination under subsection (a) that a prohibition under that subsection is in the public interest at any time after making such a determination; and

(2) shall reassess such a determination after—

(A) any amendment by the European Union to the EU Directive referred to in subsection (a); or

(B) the adoption of any international agreement pursuant to section 3(1).

(C) enactment of a public law or issuance of a final rule after formal agency rulemaking, in the United States to address aircraft emissions.

The committee-reported amendment in the nature of a substitute, as amended, was agreed to.